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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2007-1092; FRL-9990-43-Region 5]**

**Air Plan Approval; Michigan; Michigan**

**Minor New Source Review**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the rescission of Michigan rule 221 from the Michigan state implementation plan (SIP). Rule 221 exempted sources that had significant net emission increases of sulfur dioxide, particulate matter, and carbon monoxide from offset requirements. Michigan rescinded this rule effective November 14, 1990.

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2007-1092. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Constantine Blathras, Environmental Engineer, at (312) 886-0671 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Constantine Blathras, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0671, [Blathras.constantine@epa.gov](mailto:Blathras.constantine@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. What Action is EPA Taking?
- III. Statutory and Executive Order Reviews.

**I. Background**

Section 110(a) (2) (C) of the Clean Air Act requires that the SIP include a program to provide for the "regulation of the modification and construction of any stationary source within

the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved." This includes a program for permitting construction and modification of both major and minor sources that the State deems necessary to protect air quality. The State of Michigan's minor source permit to install rules are contained in Part 2 (Air Use Approval) of the Michigan Administrative Code. Changes to the Part 2 rules were submitted on November 12, 1993; May 16, 1996; April 3, 1998; September 2, 2003; March 24, 2009; and February 28, 2017. EPA approved changes to the Part 2 rules most recently in a final approval dated August 31, 2018 (83 FR 44485).

Rule 336.1221 (Construction of sources of particulate matter, sulfur dioxide, or carbon monoxide in or near nonattainment areas; conditions for approval).

EPA published a proposed disapproval of the 1993, 1996, and 1996 submittals on November 9, 1999 (64 FR 61046), but never published a final disapproval. As part of that proposed disapproval, EPA conducted an evaluation of the State submittal and found that as one of the items, the State failed to rescind Michigan rule 336.1221. In that action, EPA stated, "Michigan rule 336.1221 impermissibly exempts sources that have significant net emissions increases of sulfur dioxide, particulate matter, and carbon monoxide from offset

requirements. Michigan Department of Environmental Quality rescinded Michigan rule 336.1221 effective November 14, 1990. However, the State never submitted the rule to EPA for rescission. Because Michigan did not submit the rescission to the USEPA for removal of the rule from the SIP, the Michigan NSR rules are not approvable at this time."

On September 24, 2003, the State of Michigan submitted a SIP revision to EPA requesting full approval of Michigan's Clean Air Act New Source Review SIP. As part of that submittal requesting revisions to Parts 1 (General Provisions) and 2, Michigan specifically requested to rescind rule 336.1221. As part of its technical support document, Michigan stated that rule 336.1221 was rescinded from the State rules in 1990, and requests that EPA remove it from the SIP.

At the time of the 1999 proposed disapproval, the Part 2 rules also included the state's major nonattainment PTI permitting program. The major nonattainment provisions have been removed from Part 2, and are now covered by the Part 19 (New Source Review for Major Sources Impacting Nonattainment Areas) rules. The Part 19 rules were fully approved by EPA into the Michigan SIP on December 16, 2013, (78 FR 76064). The Federal nonattainment air quality permitting regulations are found in 40 CFR 51.165(a) and (b). The Federal rules found at 40 CFR 51.165(a) and (b) specify the elements necessary for

approval of a State permit program for preconstruction review for nonattainment purposes under Part D of the Clean Air Act. A major source or major modification that would be located in an area designated as nonattainment and subject to the nonattainment area permitting rules must meet stringent conditions designed to ensure that the new source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions will be obtained from existing sources; and that there will be progress toward achieving the National Ambient Air Quality Standards. EPA has found that the rules as submitted by Michigan for inclusion into its SIP are at least as stringent as the Federal rules. By rescinding rule 221 from the Michigan SIP, the Michigan SIP is meeting the Federal statutory requirements for an approvable Part 2 and Part 19 air permitting program.

On December 13, 2018 (83 FR 64055), EPA published a Federal Register action proposing approval of the rescission of rule 221 from the Michigan SIP. EPA received no comments during the public comment period which ended on January 14, 2019.

## **II. What Action is EPA Taking?**

EPA is approving the rescission of Michigan rule 336.1221 from the Michigan SIP.

## **III. Statutory and Executive Order Reviews.**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those

areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time



within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: February 25, 2019.

Cheryl L Newton,  
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**§ 52.1170 [Amended]**

2. In § 52.1170, the table in paragraph (c) is amended by removing the entry for “R 336.1221” under “Part 2. Air Use Approval”.

[FR Doc. 2019-04162 Filed: 3/8/2019 8:45 am; Publication Date: 3/11/2019]